

*Revised  
Jan. 7, 1977*

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LOCAL UNION NO. 1045, INTERNATIONAL :  
ASSOCIATION OF FIRE FIGHTERS, AFL- :  
CIO --- CLC, CONCORD, N. H. :

and :

CITY OF CONCORD, NEW HAMPSHIRE :  
:

CASE NO. F-0101-A

*Decision 77-01*

BOARD DECISION

Appearances: Representing the Public Employer, City of Concord, N. H.,  
Paul Cavanaugh, City Solicitor  
Clayton A. Higgins, Jr., Chief, Concord Fire Department  
Joseph C. Musumeci, Personnel & Purchasing Director

Representing the Public Employee, Local Union No. 1045,  
Thomas J. Houghton, President, Associated Fire Fighters of  
New Hampshire  
Raymond J. Kelley, President, Local Union No. 1045

The Public Employer, City of Concord, New Hampshire, requested a rehearing on the Public Employee Labor Relations Board decision of November 30, 1976. Said decision created two bargaining units within the Concord Fire Department; one comprised of all Fire Fighters, Fire Alarm Dispatchers, Fire Alarm Linesmen, Fire Prevention Inspector and Assistant Mechanic, the other unit, The Supervisory Unit included all Fire Suppression Officers, Lieutenants, Captains, Deputies, Mechanical Captain, Fire Alarm Captain, Fire Prevention Lieutenant, Fire Prevention Deputy and Training Deputy.

Both parties at the original hearing on October 21, 1976 basically agreed to the formation of two units. Now comes the Public Employer, City of Concord, presenting evidence in support of the petition for rehearing, requesting the exclusion of the three (3) Deputy Chiefs from the Supervisory bargaining unit.

Evidence presented indicated that the three (3) Deputy Chiefs could, in fact, perform all of the Chief's duties in the absence of the Chief and, frequently did so. Further, the inclusion of the Deputy Chiefs in the Supervisory bargaining unit would in fact place the three (3) Deputy Chiefs' positions in conflict with the statutory requirements for a bargaining unit.

Testimony of the Chief of the Fire Department and representatives of the Public Employer, City of Concord, indicated that the Deputy Chiefs exercised major significant supervisory authority over the entire Fire Department, including members of the newly constituted Supervisory bargaining unit. The ranking supervisory authority over all officers and members of the Department

Testimony indicated the very grave possibility of conflicting loyalties between their positions as overall supervisors and those they supervise if the Deputy Chiefs are permitted to be members of the Supervisory bargaining unit, to the extent that internal disciplinary conflicts could arise in the day-to-day relationship of members in the Department.

In light of all the evidence and the fact that the Public Employee Labor Relations Board in creating new bargaining units in similar situations have not permitted Deputy Chiefs in the same unit, PELRB rules that the three (3) Deputy Chiefs must be excluded from the Supervisory bargaining unit.

The original ORDER of this Board, F-0101-A dated November 30, 1976, creating two bargaining units in the Concord Fire Department; one, the Fire Fighters Unit, and one, the Supervisory Unit, is amended on Page 2, No. 3 of said Order to read, as follows:

"The Supervisory Unit will include all Fire Supression Officers, Lieutenants, Captains, Mechanical Captains, Fire Alarm Captains, Fire Prevention Lieutenant, Fire Prevention Deputy, Training Deputy, but will exclude Chief and Deputy Chiefs."



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EDWARD J. HASELTINE, CHAIRMAN  
Public Employee Labor Relations Board

Signed this 7th day of January, 19 77.



- August 5, 1976 - At 2:00 p.m., Hearing Officer, Edward L. Allman, reported on the Bedford hearing to the full Public Employee Labor Relations Board in Executive Session.
- August 9, 1976 - PELRB Decision in Case No. P-0701, issued establishing the bargaining unit for the Bedford Police Department.
- August 12, 1976 - Chairman of the Board of Selectmen, Alfred Lambert, advised PELRB that the matter was being referred to Town Council for possible appeal.
- August 23, 1976 - Motion for Rehearing on PELRB decision establishing the bargaining unit filed by Attorney James E. Higgins on behalf of the Town of Bedford, New Hampshire.
- August 25, 1976 - Motion for Rehearing granted and hearing scheduled for September 14, 1976 at 1:00 p.m. in Concord, New Hampshire.
- September 14, 1976 - Rehearing held at 1:00 p.m., Room 306, Legislative Office Building, North State Street, Concord, New Hampshire. Testimony heard from Chief of Police, Richard Audett and Alfred J. Lambert, Chairman, Board of Selectmen; also, testimony from Detective Roger Grenier of the Bedford Police Department.
- October 5, 1976 - PELRB reaffirmed its original decision of August 9, 1976 constituting the bargaining unit for the Bedford Police Department.
- October 15, 1976 - Bedford Police Association after knowledge that the bargaining unit had been created, filed their intention to negotiate with the Town of Bedford, New Hampshire.
- October 22, 1976 - Public Employer, Town of Bedford, New Hampshire, refused to recognize the Bedford Police Association because an election had not been conducted and the Bedford Police Association did not possess a certification as a result of an election.
- November 4, 1976 - Election conducted by PELRB at which time, after the above cited action had transpired, the Chairman of the Board of Selectmen objected to the conduct of the election stating he had not received proper notice.

As a courtesy to the Public Employer, the representative of PELRB agreed to impound the ballots until it had been determined whether due notice of the election had been properly sent to all interested parties.

- November 19, 1976 - PELRB determined that proper notification had been made and ballots would be counted in the presence of both parties.
- December 2, 1976 - FELRB issued certification of bargaining unit of the Bedford Police Department to the Bedford Police Association pursuant to election conducted on November 4, 1976.
- December 3, 1976 - The Public Employee, the Bedford Police Association, Bedford, New Hampshire, filed a motion for a hearing for the purpose of establishing certain facts in the case, under Rule 5 of the Public Employee Labor Relations Board's Rules and Regulations.
- December 28, 1976 - Motion for hearing granted and hearing scheduled for January 7, 1977.
- January 7, 1977 - Hearing held in Room 306, Legislative Office Building, North State Street, Concord, New Hampshire. Evidence heard from James Higgins, Attorney for the Public Employer, Town of Bedford, New Hampshire; Robert Brooks, Member of the Board of Selectmen; Attorney Emile Bussiere, representing the Public Employee, Bedford Police Association; and, Detective Roger Grenier, Vice President of the Bedford Police Association.

#### FINDINGS

After hearing all of the evidence and reviewing all actions pertaining to this case, the Public Employee Labor Relations Board advises that the Public Employer, Town of Bedford, New Hampshire, did not comply with the Rules and Regulations of PELRB, Section 9.4, "Filing of Budget Submission Dates", and, therefore, declares the budget submission date in the Town of Bedford, New Hampshire to be March 8, 1977 (Annual Town Meeting Date).

PELRB is of the firm opinion that the Board of Selectmen had due knowledge of the activities of the Bedford Police Association and their intent to attempt to negotiate a contract. Because of the long history of the actions in this case, it is further apparent from the evidence that the Board of Selectmen attempted to delay discussions with the Police Association through various approaches to the problems.

While there may be certain technicalities that have not been complied with by both parties because of the relative newness of the statute covering labor relations, it is the Public Employee Labor Relations Board's Order that both parties sit down and discuss their mutual problems in good faith, consistent with the intent of the statute, as set forth in the law's statement of policy which states:

"The legislature declares that it is the policy of the State to foster harmonious and cooperative relations between public employers and their employees....."

BOARD ORDER

1. Valid date of Certification of the Bedford Police Association to be November 4, 1976, day of actual balloting.
2. Budget Submission Date for the Town of Bedford, New Hampshire, to be March 8, 1977. (Annual Town Meeting Date for 1977).
3. Both parties to sit down within the next ten (10) days and negotiate in good faith.
4. Advise the Public Employee Labor Relations Board as to progress made by January 15, 1977.

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EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Mailed to:

Alfred J. Lambert, Chairman, Board of Selectmen  
James Higgins, Attorney, Sheehan, Phinney, Bass & Green  
Roger P. Grenier, Detective, Bedford Police Department  
Emile R. Bussiere, Attorney, Manchester, New Hampshire